

5 May 1980

MEMORANDUM FOR THE RECORD

SUBJECT: Agency Fuel Allocation

STAT 1. [] and I met with Department of Energy representatives on 2 May, to discuss the Agency's fuel allocation. Representing DOE were: James Kelley, Deputy Assistant Administrator for Regulations and Emergency Planning in the Department's Economic Regulatory Administration (ERA), Bill Caldwell of that office, Peter Schoenburg, DOE General Counsel's Office, and Phil Mandale, ERA, Fuel Supply and Allocation.

STAT 2. [] briefed the group on the Agency's justification for the 100-percent base period allocation as a subclaimant of DOD, under Title 32A of the CFR, wherein the Department of Commerce recognized this entitlement. The DOE representatives did not seem impressed with our claim that we should be treated as an associated DOD agency. In fact, Mr. Kelley clearly sees DOD and CIA as being specifically separate under the existing allocation system. It was also pointed out to DOE that CIA has an extraordinary authority to operate, notwithstanding any other law or regulation. Notwithstanding such authority, the structure of DOE's allocation program prevents CIA from exercising this authority.

3. Mr. Kelley went on to note that in his view, the Agency could take two approaches: First, for the Agency to ask for an interpretation of the DOE regulations as it applies to CIA, and to see if such an interpretation would accommodate the Agency's requirements. Secondly, the Agency could petition for a rule change which would require an extended rule-making process, approximately 5-6 months.

4. Mr. Schoenburg ventured that the Agency should first request interpretation which his office would consider. Barring a positive outcome, the Agency would then pursue the matter through the rule-making process. Mr. Schoenburg further pointed out that his office is in the process of reviewing the Defense Production Act (DPA) allocation priorities

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system as it applies to DOD. This is expected to take about five months. He believes that CIA might be included under the DPA revision. If this were to be the case, the Agency would not have a fuel allocation problem. The revision to the DPA will provide for qualifying agencies to obtain fuel under non-emergency situations as well.

5. DOE's current allocation-setting authority expires in September 1981; Schoenburg stated that our problem might disappear then. However, there is nothing to suggest that this authority will not be continued.

6. We agreed that this Agency should request reconsideration by DOE of its standing, making a case for the Agency to be covered under the existing allocation rules in the same manner as it applies to DOD. It was agreed that Mr. Schoenburg would contact [redacted] regarding the substance of such a request. [redacted] will prepare the response.

7. For the record, we pointed out to DOE that CIA's standard operating mode is one of an Agency engaged in essential defense readiness-oriented operations. This is the language which qualifies DOD to receive the 100-percent base period allocation under 10 CFR 211.103.

8. It was our consensus that this Agency should vigorously pursue a request to DOE to be treated as an associated agency of the DOD in the same manner as the Department of Commerce treats it under 32A CFR. It appears that DOE may have authority to grant such status without having to resort to the formal rule-making process. Such a course of action should insure against wide public awareness of this Agency's operational needs.

9. If this course of action is unsuccessful, this Agency will be required to either seek an alteration in DOE's allocation rules, with all the attendant publicity that goes with such a process; or alternatively, to accept a reduced allocation on the same basis as other civilian agencies.

[redacted]

Deputy Chief,
Plans and Programs Staff

cc: Legal Adviser
C/PD/OL

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